SUBMISSION TO THE QUEENSLAND LAW REFORM COMMISSION – MINING LEASE OBJECTIONS PROCESS. By JOHN CROSBY *Grad.Dip.Corp.Fin*, Barrister and Solicitor, Melbourne (but formerly and originally also of Queensland).

1.BACKGROUND:

Having been advised of the process and terms of reference issued by the Queensland Attorney General, and considered the very helpful website on the subject, this submission is made with due respect and regard for the considerable work done in the process and again as reported on the website. Many interested and impacted entities have been invited to make submissions, and no doubt this has been done. The challenge (and request) made of me to make a submission (on 14.9.24). by my long term (former) colleagues (and clients too) and my continued interest and communication with respected Queensland figures, now prompts me to make a submission (noting the extended date from 13.9.24 to 30.9.24). My own background, having been an officer of the Queensland Departments of Mines and Justice, (qualified Clerk of Petty Sessions and Mining Registrar, 1962), from March, 1959 to November 1969, admitted as Solicitor of Queensland Supreme Court 25.11.1969, then in practice in Queensland continuously from 1.12.69 to 3.12.1979 and again later September 1997 to November, 2004, and with "interstate" and "International" experience as a Resources Lawyer, (Company Secretary and acting Chief Financial Officer), may help establish some relevance. This included roles as Mining Registrar, and lawyer representing companies and others, and as Corporate Lawyer for Projects such as the "original" Queensland Nickel in Townsville (1974-79) before moving to Melbourne as a corporate lawyer with Shell/Billiton, and then as General Counsel of Shell Australia, Brunei Shell Petroleum (in Brunei 1993-1996) and ultimately back in Brisbane as General Counsel and Company Secretary of Shell Coal (later also Anglo Coal), and consultant, 1997-2004. Since then a Consultant to various companies and clients including Queensland (but also other States, mainly Western Australia re Gold).

2. THE PROCESS OF "OBJECTIONS".

The website information canvasses the existing "Land Court" process and the various statutory matters in addition to be considered and ultimately the Ministerial decision which may result in the issue of a Mining Lease in Queensland. (There are processes well noted as to both "appeal" and "judicial review" of administrative decisions in the papers published). The references to "costly legal proceedings" also so relevant, although not a lot of emphasis on the overall "economic" impact on "successful" (but at times seemingly completely "unjustified" objections).

3. POLICY AND PRINCIPLE OF DESIRING MINING AS ESSENTIAL.

The stated intention of actually desiring "Mining" as an essential part of the economy and industrial activity in Queensland is an element which seems to be under question, and the appeal to me to express some views for consideration by the QLRC, is based around the concern that there may have been deficiencies in the ability of "objectors", but now the "objector" rights (particularly when there is a failure to "balance" such "rights" against the "rights" of applicants and eventual Mining Leasees seem to be the "essence" of the laws. This could of course result in misinterpretation of the underlying principle of the importance of "mining" (and its many benefits), to one of there being a greater principle namely that "there should not be any mining of anything", as an underlying principle, and therefore the "rights" of "objectors" should always prevail. (An over simplification but one that The "rights" therefore

being reserved (though with no real priority of which one might prevail), to "Environmental", "Native Title Claimants", (Indigenous, Aboriginal and Torres Strait Islander "rights" and legislation), being matters that are brought to my attention, for inclusion in a submission. These are NOT paramount rights under existing laws, and unless or until they are given such status, and particularly if the real intention is to "preserve" the principle and policy of facilitating mining, surely any QLRC review must consider giving the alternative of having such rights and their prioritization when competing for statutory support appropriate statutory declaration to that effect. If not then some declaration of just where in the hierarchy of "priorities" the respective rights should be placed. For example in descending order, "Mining", "Environmental", "Native Title" (this including both "heritage" and "use rights being asserted). To a large extent, there can be included "Conditions" recognizing the respective interests, as has often been the case, and certainly exposure of the respective arguments being advanced and how and why the respective "objections to mining" can be accommodated. This can of course be done without effectively creating superior rights against mining and the granting of mining leases. Surely the important process must recognize the "right" to "object", BUT NOT THE RIGHT TO "PREVAIL" over the principle of supporting mining. While referring to "Environmental", "Native Title", there are also other categories of objectors, which include, "Landowners", (both freehold and crown leasehold) and other "issues" objectors at times, and "community" and others. Many of such "objector" interests "overlap", but generally most if not all claiming "priority" over the alternative of granting what might otherwise be "justified" application for mining leases.

It also raises the "corollary", though I doubt this has ever been explored, for a "Right of Objection" (should this be considered the best method, though it is questionable) for Mining Lease applicants to "Object" to the granting of certain asserted "Environmental" and/or "Native title" rights, being asserted, (not necessarily as part of a Mining Lease application), as there seems to be a complete "vacuum" in the statutory provisions presently existing for such "Right to Object". (This is of course not one of the terms of reference under discussion.)

I would submit though that "objectors" who "object" based on the "subjective" claims of their "rights" seemingly do not (or hardly ever) address any of the "Mining Lease Applicants" evidence or "rights", but merely rely upon some "principle" that their subjective "rights" (be they "environmental" or "native title" (greatly abbreviated but includes "heritage" and "culture") should prevail, without any reference consideration or real "OBJECTION" to the "rights' (so long as there still exists) a right to apply for (or be granted) a "mining lease". Surely there is justification in the QLRC making any recommendations, to include such a requirement on the part of such "objectors".

There is no (apparent) legal principle that for example an applicant for a Mining Lease, MUST APPLY TO THE ENVIRONMENT (EPA) ATHORITY, OR THE "NATIVE TITLE " AUTHORITY, or EVEN THE "LOCAL GOVERNMENT, LAND OWNER ASSOCIATION, OR "COMMUNITY GROUP for a Mining Lease! No, the process is, and should remain close to the present, so long as "mining" is considered an appropriate activity by the Government of the day! The process is to apply under the relevant laws (Mining Act, e.g. Mineral Resources Act 1989 at present) for a Mining Lease! Yes, this leaves "others' then the "right to object", which is the matter under consideration. CERTAINTY SHOULD BE CREATED AS TO THE PRIORITY IN THE HEIRACHY OF THE ACTS, WITH THE MINING ACT TO PREVAIL.

4. NOT A CASE TO "PROHIBIT" OBJECTIONS. This submission is not advocating the prohibition of objections. There is a long history as to the "status" of some "objectors", and

most have ultimately been determined that the "*locus standii*" (formerly pursued also with some degree of "arrogance" by applicants) principle is also one that was not justified to exclude "objectors". Many "objectors" and "applicants", through consultation, and where appropriate "mediation" have been able to deal with issues in dispute (as in many other situations in society), so there is no case to "prohibit" objections, and this is not being submitted. Consideration could or should also be given as to just what benefit an "objector" to a "mining lease application", should be able to derive by lodging an "objection". There are already 'costs" considerations, such as the considerable legal costs if parties are represented in the "objection" process by lawyers, (or even by EDO), but there seems to be no sanction against either "deriving a benefit" from making an objection, such as financial and other "incentives" demanded or secured for "withdrawing" an objection, or the consequences suffered by a Mining Lease applicant as a result of there being an "unjustified" objection. There may be scope for the Court/entity which determines such an objection, to firstly make a "ruling" as to whether such an objection is "justified", and without recognizing the "reasonableness" of making an objection, (which should be permitted), to then determine that such objection does, or does not prevail over the application for the mining lease. The making of "spurious" and "unjustified" objections must be a matter for consideration. The corollary of "Making an unjustified application for a mining lease", could also be considered, although the consequences would really be just "refusal". Economic and financial implications, and the misuse of "objection" process surely also must be a matter for consideration by QLRC. I would submit that there needs to be some appropriate requirement for an "objector" to include a "Financial Impact Statement" with any objection, as to the impact of a successful objection on ALL PARTIES. This also to be considered and taken into account by the Court/Authority which ultimately determines the "objection".

I would also submit for consideration, that so long as the relevant Mining Act prevails, there should NOT BE either a real process or any other "de facto" mechanism which would effectively give any other erstwhile "objector" a right to have a "blanket" right to PREVENT MINING ANYWHERE SPECIFICLY or GENERALLY. (A sort of "No Mining Act") This would be absurd but is also something of a "logical" consequence of there being an actual or "virtual" , "Objection against Mining Leases" attitude cultivated or reflected in "persistent" objections (to Mining Lease Applications.) This could also be inserted as a provision in the relevant Mining Act or objection process.

5. THE LAND COURT AS MEDIUM.

The Queensland Land Court, though being the medium and in many respects not really that "different" to other jurisdictions, may not be the most appropriate entity. Its function is not really "specialized" and though there is always the "economics" to maintain an appropriate "Dispute Resolution" process, other jurisdictions still favour the more "traditional", Mining Warden's jurisdiction, though now hardly identifiable to that of the "Gold Rush" days of the 1800s, and into 1980s, but there does seem to be something lacking in the "culture" aspects, if in fact the principle of "supporting Mining" remains as a significant element in the overall economic and ultimately financial wellbeing of the State of Queensland, so dependent on a thriving "MINING" economy for other "social" issues. Throwing in other issues such as "reform" processes for determining other "revenue" aspects of mining, there may be a strong case for consideration by the QLRC TO CONSIDER A DIFFERENT STRUCTURE, where not only "objections to Mining Leases", but many other aspects of "mining" might be placed in a more specialized institution. This is not a call for re-establishing the "old" Mining Wardens Court/s

(where they existed throughout Queensland originally and later centralized), but a jurisdiction with more "mining expertise" represented. There seems to be a strong case for "Qualified Assessors" to be included in any "Court"/Authority which might determine Objections, with elements of legal, finance and technical aspects considered.

6. SMALL MINERS, SYNDICATES, EXPLORERS AND PROSPECTORS.

I had complaints and requests from some "Mining Enthusiasts" in this category concerned about just where the Application for Mining Leases and the "objection" process presently prevailing has left this class of mining contributor. The complaint being that essentially they are completely being excluded from the Queensland Mining scene! There are of course provisions in mining laws dealing with "prospectors, almost "hobbyists", but the laws otherwise stifling enthusiasts from progressing their interests.

The complaints include their being "excluded" through the granting of "exclusivity" under other mining tenements to "larger" companies, including holders of "Exploration Licences", so the effect being that many "prospective" areas are "tied up", thus excluding them from prospecting, but where the EL holders for example are effectively "doing nothing". So without diminishing greatly such EL "rights", there does not seem to be "sufficient" scope under existing provisions for this class of "Small Miners" to effectively "object", not necessarily to granting of a Mining Lease, but to actually facilitate them to "apply" for a "Small" mining lease, which "right" is otherwise denied to them! Difficult maybe but also an issue which might be included in any QLRC examination of the relevant provisions of the process under review. So to keep it in perspective of "Objections", consideration might be given to allow "Small Miners" notwithstanding that an EL might exist, allow an application by a "Small Miner" for a Mining Lease, and give the EL holder the "right" to object to such a lease, but only if the EL holder establishes it has actively prospected the subject land (and not just "tied it up" under a larger EL area).

7. FURTHER DISCUSSION AND CONSULTATION. This is noted also as progressing. I can only invite further elaboration and discussion on this submission, noting that visits planned to places such as Gladstone in November. (I was in law practice there also as partner of Brisbane firm, where I opened the office 1971-974, and maintained continuing interests there). Much of Queensland familiar as I also worked in Charters Towers (also practice there 1969-1971 – also my old "home town", and continuing interests now), Mount Isa (Mining Warden's office also there 1963-1966), Georgetown (also Mining Registrar there 1968), many others, Townsville, Toowoomba, Mundubbera-Eidsvold! Too).

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16.9.24. Melbourne.